

12 JAN 2006
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HAMRE, SCHUMANN, MUELLER & LARSON, P.C.
P.O. BOX 2902-0902
MINNEAPOLIS, MN 55402

In re Application of
KREUTER

Application No.: 10/517,969
PCT No.: PCT/EP03/06249
Int. Filing Date: 13 June 2003
Priority Date: 13 June 2002
Attorney Docket No.: 02968.268USWO
For: PROTECTIVE COATING FOR
DOCUMENTS

DECISION ON

PETITION UNDER

37 CFR 1.47(b)

This is a decision on applicant's "PETITION UNDER 37 CFR §1.47(b)" filed in the United States Patent and Trademark Office (USPTO) on 10 August 2005.

BACKGROUND

On 13 June 2003, applicants filed international application PCT/EP03/06249, which claimed a priority date of 13 June 2002. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 24 December 2003. The thirty-month period for paying the basic national fee in the United States expired at midnight on 13 December 2004.

On 13 December 2004, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and an unexecuted declaration of the inventor.

On 15 June 2005, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventor in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date were required. The NOTIFICATION set a two-month extendable period for reply.

On 10 August 2005, applicants submitted the instant petition under 37 CFR 1.47(b), which was accompanied by, *inter alia*: a declaration of inventor executed by Dennis J. Warwick as representative of the non-signing inventor; a declaration of facts from Cassandra Voigt; Federal Express tracking reports; a copy of a translated redacted employment contract between Mr. Kreuter and DataCard Deutschland GmbH of Dusseldorf Germany (hereinafter "DC Germany"); a

declaration of facts by Heiner Bohnsack; a declaration of facts by James A. Larson; and an authorization from a Corporate Attorney of DataCard Corporation of Minnetonka, Minnesota (hereinafter "DCC") for Dennis J. Warwick to sign on behalf of DCC.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

Items (1), (2), (3), (5) and (6) have been met. As to item (1), the petition fee under 37 CFR 1.17(g) as of 22 November 2004 is \$200. Applicants have paid \$130. The balance of \$70 has been charged to Deposit Account 50-3478.


Item (4) has not been met. Authorization for Dennis J. Warwick to sign the declaration of inventors on behalf of DCC is given by Cassandra Voigt, identified as a "corporate attorney." However, a corporate attorney is not an officer of the company. See MPEP § 409.03(b).

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(b) is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file the proper response will result in abandonment of this application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)". No additional petition fee is required.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Daniel Stemmer
Legal Examiner
PCT Legal Affairs
Office of Patent Cooperation Treaty
Legal Administration

Application No.: 10/517,969

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Telephone: (571) 272-3301

Facsimile: (571) 273-0459